

THE INTERSECTION OF ONLINE COMMUNICATIONS AND LEGAL ETHICS

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The explosive growth in the use of social media has resulted in the discovery of new ethical issues that attorneys may encounter when online activity collides with legal ethics. As a result, both the courts and counsel have begun grappling with the acceptable boundaries of legal ethics and the use of social media.

Ethical issues may arise when attorneys post comments on their own social media sites or post public comments on online news media websites and blogs. Because attorneys—be they in the private sector or the public sector—are bound by the professional codes of conduct, their freedom to vent, complain, and gripe is much more limited than is that of the average citizen.¹ As an officer of the court, an attorney loses the unfettered ability to criticize the court and opposing counsel. Thus, a lawyer must be prudent in all social media postings, but particularly when posting comments online about an ongoing case, opposing counsel, a client, a judge, or a jury.

Even though attorneys can face ethical issues in a wide variety of circumstances involving social media, attorneys should, at a minimum, be aware that ethical issues arise when a lawyer does the following:

- makes a comment about a pending case anonymously or under a pseudonym,
- uses his or her own name when posting a criticism of the judiciary or opposing counsel,
- makes an online comment lacking candor or involving a half-truth,
- engages in a fact-specific legal discussions online, or
- fails to deal with a client's social media activity properly.

This article highlights several of these ethical crossroads and makes recommendations on how to steer clear of ethical traps.

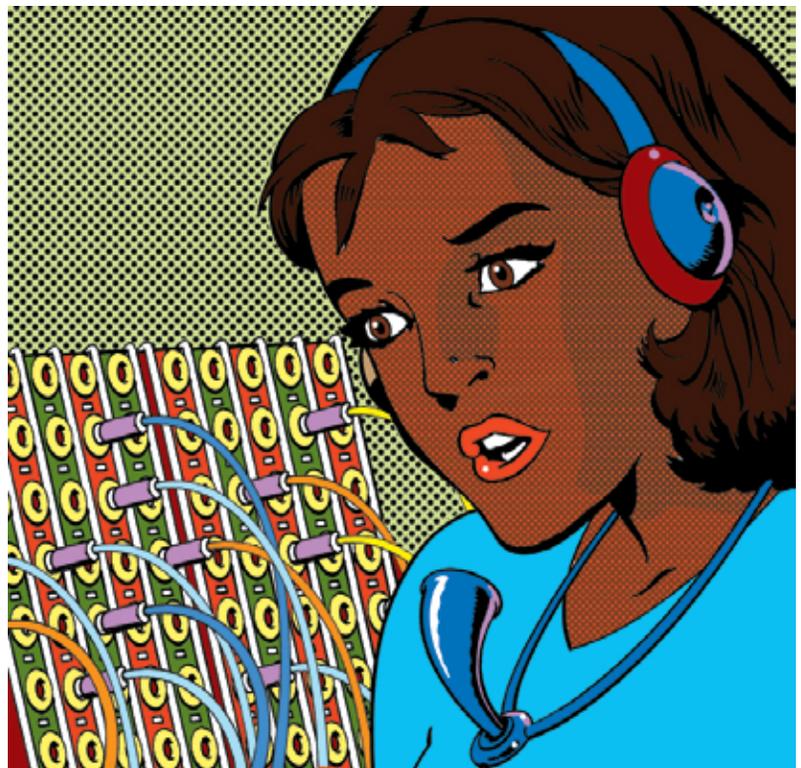
Making Comments About Pending Cases Anonymously or Under a Pseudonym

Rule 3.6(a) of the American Bar Association's Model Rules of Professional Conduct governs extrajudicial statements made by lawyers.² The rule provides that a lawyer should not make an extrajudicial statement that he or she knows or

reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding. Although this rule contemplates statements made to the media, it also can be applied to statements attorneys make using social media, such as publicly commenting on news articles, blogging, or posting comments on Facebook®.

In one case, a Cleveland judge's AOL e-mail address was registered on the local newspaper's website under the pseudonym "lawmiss."³ Lawmiss was critical of statements that had been made to the judge. In one instance, lawmiss criticized an attorney who had appeared before the judge with these words: "if he could just shut his Amos and Andy style mouth."⁴ That same lawyer appeared before the judge in one of the "most notorious serial killer" cases in Cleveland's history.⁵

The newspaper confronted the judge about the comments, and the judge denied making the statements. The judge further indicated that it was her 23-year-old daughter, a law student, who had made the statements.⁶ A request



for public records showed that some of the articles were accessed on the judge's court-issued computer at the exact times and dates of three comments posted by lawmiss.⁷ The attorney sought the judge's recusal from the case. The judge's attorney later conceded that the judge and her daughter used the pseudonym and had commented on articles unrelated to the judge's cases. The Ohio Supreme Court ultimately removed the judge from the case because of the online comments.⁸

Recently, a reader's comment on an article published in the *Las Vegas Review Journal* detailing a romantic relationship between a judge and a former prosecutor prompted a defamation suit by the former prosecutor and her husband against the anonymous commenter.⁹ The anonymous commenter, using the screen name "lawyer," was purportedly a very unpopular member of the legal community. In a motion to quash seeking to prevent the release of his identity, the anonymous commenter cited First Amendment rights as well as a U.S. Supreme Court case that held anonymous speech is protected. In the motion to quash, the lawyer alleged that revealing the writer's identity could result in disciplinary action, would ruin the writer's career, and was likely to prevent the lawyer from practicing law in the future.¹⁰ A ruling on both of the motions is pending.

Because any information posted using social media—particularly social networking sites—can be easily spread to a large number of people, lawyers should be careful in their social networking and online habits. Even though lawyers may make general statements through online media about pending legal proceedings that provide information that is available in the public record or information regarding the general scope of an investigation without violating ethical rules, attorneys should refrain from providing specific information that is not available to the public or engaging in fact-specific discussions—whether anonymous or not—about cases in which they are involved.

Using Their Own Names When Posting Criticisms of the Judiciary or Opposing Counsel

As use of social media becomes a more prevalent feature of legal matters, lawyers seem to be ethically stumbling more frequently when they communicate via online media.¹¹ No single agency tracks the number of lawyers facing discipline for online behavior, but the number of news reports on the online ethical lapses of lawyers appears to be on the rise. This trend could reflect the fact that lawyers seem to relax their standards and often use casual or even derogatory language when communicating online in contravention to the ethics rules, such as the ABA's Model Rule of Professional Conduct 8.2(a). This rule provides that "[a] lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office."¹² State bars and ethics committees are not hesitating to sanction attorneys for making improper comments about the judiciary and opposing counsel or for criticizing them.

In one instance, a temporary prosecutor working through a work-exchange program ran afoul of the ethical rules when he blogged about a case. He called his opposing counsel "a chicken" for requesting a continuance. After learning of the posts, the presiding judge described the prosecutor's conduct as "juvenile, obnoxious and unprofessional." The judge also noted that the prosecutor's choice of a public medium for the publication of his commentary was reckless because there was a possibility that the post would be "distributed uncontrollably."¹³

In another example, a former assistant public defender in Illinois was charged with violating several ethical rules, including the ABA's Model Rule of Professional Conduct 1.6, for information she posted on her blog.¹⁴ In her posts, she regularly referred to clients by first name, nickname, or jail identification number, and she described in detail the clients' cases, personal lives, and drug use and also posted other private and potentially detrimental or embarrassing information about her clients. Although she made some minor attempts to cloak the identity of her clients, other information in the posts made the clients easily identifiable. The attorney was brought before the disciplinary commission not only for revealing confidential information about her clients but also for making disrespectful comments about the judges before whom she frequently appeared—including referring to one as "Judge Clueless."

In another case, a prosecutor in Fort Pierce, Fla., found himself in trouble after composing a remix to the theme from "Gilligan's Island" that included facts about a felony assault trial in which he was involved and posting it as his Facebook update.¹⁵ Ultimately, a mistrial was declared in the case to which his remix referred, and a reputed gang member was temporarily off the hook. Even though the prosecutor's lyrics may not have caused the mistrial and he did not face disciplinary action by the State Attorney's Office because it did not have a social media policy at the time, the defense attorney—who was called "weasel face" in the online lyrics—expressed his intent to pursue disciplinary action with the Florida bar.

The lesson that can be learned from these examples is that attorneys should always be circumspect in their communications related to the judiciary and opposing counsel, and also that the casual nature of communicating via social media does not warrant any relaxation of the ethical standards regarding what types of commentary or criticisms are appropriate. If the statement cannot be made in open court before the judge or the opposing party, it should not be communicated to an even larger audience through social media.

Making Online Comments Lacking Candor or Involving Half-Truths

Model Rule of Professional Conduct 8.4 provides, in pertinent part, that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.¹⁶ In view of this prohibition, attorneys should take care to avoid using social media to engage in conduct and communications that lack candor or shade the truth. For example, a lawyer in San Diego was

responsible for having a criminal conviction set aside and sent back to a lower court because he had posted details of the case on his personal blog while he was serving as a juror on the case.¹⁷ As a result of his failure to disclose his occupation during jury selection and his blog posts, the attorney-juror received an 18-month suspension, which was stayed with an actual 45-day suspension. He was ordered to take the Multi-state Professional Responsibility Exam within one year and to pay \$14,000 in legal fees; the lawyer ultimately lost his job.¹⁸

In another case, an Oregon lawyer posted a fake message on Classmates.com using the name of his high school classmate, who had become a high school teacher.¹⁹ The message, posted as if the lawyer's classmate was writing it, stated that the classmate had become a teacher, got to work with "high school chicks," and had been "lucky" with a few. Unbeknownst to the lawyer, there had been rumors in the community that his classmate had engaged in an affair with a student. Someone other than the lawyer copied the message that was posted on Classmates.com and sent it to school officials. A subsequent criminal investigation of the message led to the lawyer's admission that he had posted the message. Although no criminal charges were filed, a disciplinary proceeding was initiated. A trial panel initially dismissed the charges, because the ethics rules did not extend to this type of "non-professional, unregulated conduct." The Oregon Supreme Court disagreed, but then engaged in its own debate about why or whether the Oregon lawyer's conduct in posting the fake messages warranted discipline. First, the Oregon Supreme Court concluded that, because the bar had not proven the statements about the lawyer's classmate were false, the content of the fake message was not a misrepresentation. However, the court found that, by assuming his classmate's identity and posting the message, the lawyer had created a significant risk that his classmate's legal rights as a teacher would be adversely affected. The conduct raised questions about the lawyer's trustworthiness and integrity as a lawyer and warranted a public reprimand.

In another instance, an Illinois attorney and former prosecutor who was running for judicial office misled a blogger who was also a lawyer.²⁰ The lawyer-blogger posted a link to a Chicago Council of Lawyers report and stated that the candidate was not qualified for judicial office because of prosecutorial misconduct in several early criminal cases. In responding to the blogger, the candidate for judicial office told the blogger that she had been cleared of allegations of prosecutorial misconduct in an earlier matter after a full and complete hearing before the Attorney Registration and Disciplinary Commission (ARDC).²¹ The earlier allegations were related to her comments during closing and rebuttal arguments while working as a prosecutor in Cook County. In reality, the judicial candidate/former prosecutor had appeared before an inquiry board of the ARDC, which had opted against filing a formal complaint. A board of the ARDC did, however, send her a private letter admonishing her to tailor her conduct to the ethical requirements. The ethics panel concluded that the judicial candidate's statements to the blogger constituted mislead-

ing representations that warranted reprimand, although there was no "purposeful effort to deceive," because she had not actually appeared before the commission itself but simply before the commission's inquiry board. The panel, however, found no misconduct based on allegations that she had made sarcastic comments in three trials. In one instance, she was accused of referring to a murder defendant as "Mother Teresa" and "June Cleaver."

Attorneys need to remember that their online statements and social networking activity are closely monitored in nearly every corner of the legal profession. Review is no longer limited to conduct occurring before a tribunal. Disgruntled clients, lawyers outing other lawyers, and bar counsel themselves are drawing attention to postings on social media and are sparking investigations into inappropriate postings.

It is surprising to note that lawyers, who are generally thought to be more risk averse, seem to relax and take more risks when they use the Internet for communicating or venting. Lawyers should be mindful that shading the truth on the Internet is easily discernible and that hiding their identity behind a pseudonym does not mean that the online communication cannot be quickly traced to the lawyer's IP address. If the statement would not be considered truthful if communicated using traditional means, it certainly would not be considered appropriate if communicated online.

Engaging in Fact-Specific Legal Discussions Online

Even though attorneys may find it intellectually stimulating to join in online legal discussions, attorneys participating in such dialogue—whether providing comments in response to blogs, in chat rooms, or on a networking site like Facebook—must tread carefully, because there is a fine line between engaging in public discussion on general legal topics and engaging in communications that run afoul of legal ethics rules. One ethics committee has opined that, although it is acceptable for lawyers to provide articles or newsletters to individuals via the Internet, attorneys "should not answer specific legal questions from lay people through the Internet unless the question presented is of a general nature and the advice given is not fact-specific."²² The more specific the question and the attorney's response, the greater the risk that an attorney may inadvertently create an attorney-client relationship with the person asking the question and implicate professional conduct rules governing confidentiality of information and client conflicts, such as Model Rules 1.6, 1.7, 1.9, and 1.18.²³

In addition, the participants in online legal discussions are often anonymous and their locations unknown. Should the legal discussions become too specific, these attorneys could find themselves engaging in the practice of law in jurisdictions where they are not authorized to practice law. The ABA's Model Rule 5.5(a) provides that a "lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so."²⁴ Even though the perimeter of what constitutes the practice of law varies by state, the unauthorized practice of law is an ethical violation that can subject an attorney to

professional censure and civil and criminal sanctions. This issue poses a real risk to attorneys, particularly because some states—such as Florida, Mississippi, New Jersey, and Texas—can find that an individual has engaged in the practice of law even if no attorney-client relationship was formed and no compensation was paid to the attorney.²⁵

Online legal discussions also implicate lawyer advertising and solicitation rules, and attorneys should take care to avoid the appearance of soliciting clients through such online activity, because different jurisdictions have different rules regarding what is appropriate advertising on the Internet. The Florida Bar Association's Standing Committee on Advertising, for example, has determined that pages appearing on social networking sites that are used to promote the legal practice of a lawyer or a law firm are subject to the lawyer advertising rules,²⁶ which include prohibitions against any misleading information, such as references to past results, promises of results, and testimonials.²⁷

In short, the more specific the online legal discussion, the greater the risk to attorneys that their communications will violate a host of ethical rules. Attorneys should take great care to avoid answering specific factual questions when participating in discussions on social media, to learn, if possible, the locations of the persons involved in their online legal

discussions, and to refrain from appearing to solicit clients.

Failing to Deal with Clients' Social Media Activities Properly

In addition to being careful with respect to attorneys' own comments and conduct on social media, attorneys need to be mindful of how they deal with their clients' social media activities. Even though, by now, most attorneys know that they have a duty to preserve evidence related to pending or anticipated litigation, they may not realize that this duty extends to their clients' postings and communications on social media. Just as it would be improper to instruct a client to delete a problematic e-mail, an attorney cannot instruct a client to clean up his or her social media postings, such as a Facebook page.

One attorney learned this lesson the hard way when he was heavily sanctioned and censured by a Virginia court.²⁸ The case involved a civil action in which a husband was seeking damages for personal injuries and wrongful death stemming from an incident in which a cement truck rolled over and killed his wife. The defendants accused the plaintiff husband of failing to produce social media evidence responsive to discovery. During a spoliation hearing, it was revealed that the husband had deleted 16 photos from his Facebook page while the litigation was pending.

The defendants had served a discovery request seeking the contents of the husband's Facebook account and had attached to the request a picture they had retrieved from the husband's Facebook page that showed him clutching a beer can and wearing a T-shirt emblazoned with "I ♥ hot moms" while surrounded by other young adults.²⁹ After receiving the discovery request, the husband's attorney had his paralegal gain access to the Facebook page at issue. After seeing the Facebook page, the attorney instructed his paralegal to tell the husband to clean up the page. Following the attorney's instructions, the paralegal then sent the client an e-mail telling him to "clean up" his Facebook page, because "we do NOT want blow ups of other pics at trial so please, please clean up your facebook and myspace!" To make matters worse, the attorney then worked with the client to deactivate the Facebook page



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so that, when the response to the request for production became due, the husband could attest that he did not have an active Facebook account as of that date.

The actions taken by the attorney, his paralegal, and his client—along with other misconduct related to the trial—caused the trial court to reduce a \$6.2 million jury verdict to the husband by two-thirds to \$2.1 million, to issue a monetary sanction against the attorney in the amount of \$542,000 and a sanction against the husband for \$180,000, and to refer the attorney to the Virginia State Bar Association for professional misconduct.³⁰ The court found the attorney had violated the following ABA rules:

- Rule 3.3(a), which mandates that a lawyer should not knowingly make a false statement of fact or law or offer evidence that the lawyer knows to be false;³¹
- Rule 3.4(a), which provides that an attorney should not unlawfully obstruct another party's access to evidence or unlawfully alter, destroy, or conceal a document or other material having potential evidentiary value, or assist another person to do such acts;³²
- Rule 4.1(a), which states that a lawyer should not knowingly make a false statement of material fact or law to a third person.³³

The lesson to be learned from the severe sanctions that befell the Virginia attorney and his client is simple: social media evidence is no different than other evidence and must be dealt with accordingly. Attorneys should ensure that they and their clients recognize that social media postings are evidence, and such evidence must be preserved, collected, and produced in order to be responsive to discovery served during litigation.

In addition to preserving clients' social media evidence, some attorneys are taking the extreme step of controlling and utilizing their clients' social media accounts to further their clients' cases. While this article was being edited for publication, the attorney for George Zimmerman—the Sanford, Fla., man charged with second-degree murder in connection with the shooting death of 17-year-old Trayvon Martin—took over George Zimmerman's social media accounts and created a Twitter® account, a Facebook page, and a website for Zimmerman's defense.³⁴

The website, called the "George Zimmerman Legal Case," identifies seven objectives for the attorneys' online efforts:

- discrediting and eliminating fraudulent websites and social profiles,
- disputing misinformation,
- discouraging speculation,
- acknowledging the larger significance of the case,
- providing a forum for communication with the law firm,
- providing a voice for Zimmerman, and
- raising money for Zimmerman's defense.³⁵

Zimmerman's attorney admitted that the decision to create a social media presence for Zimmerman is "controversial" but claims that "social media in this day and age cannot be ignored, and it would be, in fact, irresponsible to ignore

the robust online conversation."³⁶ Zimmerman's attorney further asserts that "social media will inevitably become a standard part of the legal process."³⁷

Perhaps attorneys' assumption and use of their clients' social media accounts represent the ultimate example of the intersection of social media and legal ethics. Such conduct raises a whole host of ethical issues that will certainly be explored and discussed as the high-profile Zimmerman case progresses. For example, Zimmerman's attorney's plan to "disput[e] misinformation" through the website implicates the confidentiality provisions set forth in Model Rule 1.6 and creates a risk of waiver of attorney-client privilege if the website disclosures go too far.³⁸ Zimmerman's attorney's intent to discourage public speculation about the facts of the case and to acknowledge "the larger significance of the case" may conflict with Model Rule 3.6's provisions regarding trial publicity.³⁹

The comments to Rule 3.6 note that criminal jury trials—such as the Zimmerman case—"will be most sensitive to extrajudicial speech."⁴⁰ The comments further caution that, when prejudicial statements have been made by others, "responsive statements should be limited to contain only such information as is necessary to mitigate undue prejudice created by the statement made by others."⁴¹ Lawyers taking an aggressive approach to social media, such as the one taken by Zimmerman's attorney, should carefully consider whether the ethical risks inherent in such a tactic are outweighed by the perceived rewards.

Conclusion

The use of social media is no longer a novel concept, and, for most attorneys, clients, and the judiciary, it is a prevalent feature of their professional and personal lives. In dealing with social media—whether as participants, observers, or advisers—attorneys need to remain mindful that the ethical standards applicable to them as officers of the court do not diminish when they engage in or deal with online social media and are present even when attorneys are acting in a nonprofessional capacity or anonymously. If attorneys remain mindful of the ethical rules when they encounter social media in their practice and personal activities, they can find balance between fostering their freedom to communicate while avoiding sanctions, discipline, or professional censure. **TFL**

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Endnotes

¹John Schwartz, *A Legal Battle: Online Attitude vs. Rules of Bar*, N.Y. TIMES, at A1 (Sept. 13, 2009).

²American Bar Association, MODEL RULES OF PROF'L CONDUCT R. 3.6(A).

³Web name linked to Judge Shirley Strickland Saffold has Comments on Other Sites; Some Target Arabs, Asians and Others, www.Cleveland.com (May 9, 2010, 9:00 a.m.)

⁴*Id.*

⁵*Id.*

⁶*Id.*

⁷*Id.*

⁸*Id.*

⁹Francis McCabe, *Lawsuit Filed Against Anonymous Commenter*, LAS VEGAS REV. J., available at www.lvrij.com/news/lawsuit-filed-against-anonymous-commenter-146777995.html (April 10, 2012, 8:11 a.m.).

¹⁰*Id.*

¹¹One commentator found that, during 2010 and through November 2011, there were 689 published decisions in which evidence from social networking sites played a significant role. See John Patzakis, *689 Published Cases Involving Social Media Evidence (With Full Case Listing)*, NEXT GEN eDISCOVERY LAW & TECH BLOG, available at blog.x1discovery.com/2012/03/14/689-published-cases-involving-social-media-evidence-with-full-case-listing/ (March 14, 2012, 1:39 p.m.).

¹²MODEL RULES OF PROF'L CONDUCT R. 8.2(A).

¹³Pam Smith, *Judge Reprimands Temp Prosecutor for Personal Blog*, available at www.law.com/jsp/LawArticleFriendly.jsp?id=1146139204085 (April 28, 2006).

¹⁴*In re Pesbek*, III. Attorney Registration and Disciplinary Comm'n, No. 09 CH 89 (Aug. 25, 2009), available at www.iardc.org/09CH0089CM.html (April 30, 2012).

¹⁵The prosecutor's Facebook post included the following statement:

Just sit right back and you'll hear a tale,
a tale of a fateful trial that started
from this court in St. Lucie County.
The lead prosecutor was a good woman,
the 2nd chair was totally awesome.
Six jurors were ready for trial that day
for a four hour trial, a four hour trial.
The trial started easy enough
[but] then became rough.
The judge and jury confused,
If not for the courage of the fearless prosecutors,
the trial would be lost, the trial would be lost.
The trial started Tuesday, continued til Wednesday
and then Thursday
With Robyn and Brandon too,
the weasel face, the gang banger defendant,
the Judge, clerk, and Ritzline
here in St. Lucie.

See Todd Wright, *Lawyer Marooned After "Gilligan's Island" Facebook Poem: Lawyer's Facebook Joke Goes Wrong*, available at www.nbcmiami.com/news/weird/Lawyer-Marooned-After--Gilligans-Island-Facebook-Poem-91810124.html (April 22, 2010, 1:41 p.m.).

¹⁶ABA, MODEL RULES OF PROF'L CONDUCT R. 8.4.

¹⁷Robert J. Ambrogi, *Lawyer Disciplined Over Blog Posts*, available at http://legalblogwatch.typepad.com/legal_blog_watch/2009/09/lawyer-faces-discipline-over-blog-posts.html (Aug. 4, 2009, 10:57 a.m.).

¹⁸*Id.*

¹⁹*In re Carpenter*, 95 P.3d 203 (Ore. 2004).

²⁰Debra Cassens Weiss, *Hearing Board Recommends Remand for Prosecutor's Misleading Statements to Blogger*, ABA J. ONLINE, available at www.abajournal.com (Feb. 14, 2012, 6:30 a.m.).

²¹*Id.*

²²State Bar of Arizona Ethics Opinion 97-04: *Computer Technology; Internet; Advertising and Solicitation; Confidentiality* (1997), available at www.myazbar.org/ethics/opinionview.cfm?id=480.

²³See ABA, MODEL RULES OF PROF'L CONDUCT R. 1.6, 1.7, 1.9, AND 1.18.

²⁴ABA, MODEL RULES OF PROF'L CONDUCT R. 5.5(A).

²⁵Adrienne E. Carter, *Blogger Beware: Ethical Considerations for Legal Blogs*, 14 RICH. J.L. & TECH. 10–11 (2007), available at law.richmond.edu/jolt/v14i2/article5.pdf (April 10, 2012).

²⁶*The Florida Bar Guidelines for Networking Sites Approved by The Standing Committee on Advertising*, available at www.floridabar.org/tfb/TFBLawReg.nsf/9dad7bbda218afe885257002004833c5/a502e8b302def7a5852576e3004fc685!OpenDocument (Jan. 10, 2012).

²⁷*Id.*

²⁸*Lester v. Allied Concrete Co.*, No. 08-150, slip op. at 31 (Va. Cir. Ct. Sept. 1, 2011).

²⁹*Id.* slip op. at 10–12.

³⁰*Id.* slip op. at 23–31 and slip op. at 2 (Oct. 21, 2011).

³¹ABA, MODEL RULES OF PROF'L CONDUCT R. 3.3(A).

³²ABA, MODEL RULES OF PROF'L CONDUCT R. 3.4(A).

³³ABA, MODEL RULES OF PROF'L CONDUCT R. 4.1(A).

³⁴Natalie DiBlasio, *George Zimmerman's Attorney Launches Social Media Campaign*, USATODAY.COM (April 30, 2012), available at content.usatoday.com/communities/ondeadline/post/2012/04/george-zimmermans-attorney-launches-social-media-campaign/1#.T6AMW7NST14 (April 30, 2012).

³⁵*Why Social Media for George Zimmerman?*, GEORGE ZIMMERMAN LEGAL CASE (April 28, 2012), available at gzlegal-case.com/index.php/8-press-releases/7-why-social-media-for-george-zimmerman (April 30, 2012).

³⁶*The Responsible Use of Social Media in a Legal Defense*, GEORGE ZIMMERMAN LEGAL CASE (May 1, 2012), available at gzlegalcase.com (May 1, 2012).

³⁷*Id.*

³⁸ABA, MODEL RULES OF PROF'L CONDUCT R. 1.6.

³⁹*Why Social Media for George Zimmerman?*, *supra* note 36; ABA, MODEL RULES OF PROF'L CONDUCT R. 3.6.

⁴⁰ABA, MODEL RULES OF PROF'L CONDUCT R. 3.6 CMT. 6.

⁴¹*Id.* cmt. 7.